

**§ 930.92 Applicant agency.**

The term “applicant agency” means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

**§ 930.93 Intergovernmental review process.**

The term “intergovernmental review process” describes the procedures established by States pursuant to E.O. 12372, “Intergovernmental Review of Federal Programs,” and implementing regulations of the review of federal financial assistance to applicant agencies.

**§ 930.94 State review process for consistency.**

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (see § 930.95(a)) or within a described geographic area outside of the coastal zone (see § 930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

**§ 930.95 Guidance provided by the State agency.**

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency

consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (e.g., coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (See § 930.98.)

**§ 930.96 Consistency review.**

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal

agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

**§ 930.97 Federal assisting agency responsibility.**

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

**§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.**

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA documents, FEDERAL REGISTER) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The

Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

**§ 930.99 Availability of mediation for federal assistance disputes.**

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

**§ 930.100 Remedial action for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource